

Docket No: GI005324 C1
Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of: **SEEHRA et al.**
Application No.: **10/075,079** Group Art No.: **1626**
Filed: **February 12, 2002** Examiner: **Ebenazar O. Sackey**
For: **INHIBITORS OF PHOSPHOLIPASE ENZYMES**
Confirmation No.: **7974**
Customer Number: **25291**

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

September 21, 2004

Sir:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. § 1.705)**

1. This request for reconsideration of the patent term adjustment indicated in the Notice of Allowance mailed on June 23, 2004.
☒ The issue fee is being paid as set forth in the papers attached hereto.
2. Applicant submits herewith a "Statement of the Correct Patent Term Adjustment: Basis(es) Under § 1.702 For the Adjustment (37 C.F.R. § 1.705(b)(2)(i) and (ii))."
3. Any patent granted on this application (37 C.F.R. § 1.705(b)(2)(iii))
☒ is not subject to a terminal disclaimer
☐ is subject to a terminal disclaimer, and the expiration date specified in the terminal disclaimer is _____ (Date).
4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 1.704 (37 C.F.R. § 1.705(b)(2)(iv):
☐ there were none (37 C.F.R. § 1.705(b)(2)(iv)(B)).
☒ there were as follows (37 C.F.R. § 1.705(b)(2)(iv)(A)):

15 days delay in response to Office Action mailed December 1, 2003.

CERTIFICATE OF MAILING 37 CFR §1.10

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EV100497680 US addressed to the Commissioner for Patents, PO Box 1450, Alexandria VA 22313-1450..

September 21, 2004
Date


Cecilia Chessell
Cecilia Chessell

09/23/2004 FFANAI3 00000098 10075079

04 FC:1455 200.00 DA

5. Also attached hereto is a "Request For Reinstatement For ☐ All and/or ☐ Part of the Period of Adjustment Reduced Pursuant to § 1.704(b) – Part C." (37 C.F.R. § 1.705(c)).
6. The fee set forth in § 1.18(e) (\$200.00), required by 37 C.F.R. § 1.705(b)(1), is paid as follows:
- ☐ Attached is a ☐ check ☐ money order in the amount of \$ _____
- ☒ Authorization is hereby made to charge the amount of \$ 200.00
- ☒ to **Deposit Account No. 07-1060**
- ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.
- ☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.


Joseph M. Mazzares
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Reg. No. 32,803

Wyeth
Patent Law Department
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In re of Application of: **SEEHRA et al.**
Application No.: **10/075,079** Group Art No.: **1626**
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**STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT:
BASIS(ES) UNDER § 1.702 FOR THE ADJUSTMENT
(37 C.F.R. § 1.705(b)(2)(i) and (ii))**

1. This statement is being submitted in support of the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE" to which this statement is attached.

2. The patent term adjustment shown on the Notice of Allowance is **21** days.

It is respectfully suggested that the correct patent term adjustment under § 1.702 is:
108 days.

The USPTO has calculated a PTA of 21 days based on: 36 days delay by the PTO beyond the 14-month limit in issuing the first written Action (August 13, 2003) based on a filing date of May 8, 2002; and 15 days delay in Applicants response (March 16, 2004) to an Office Action (December 1, 2003).

CERTIFICATE OF MAILING 37 CFR §1.10

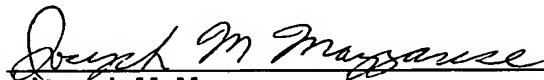
I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number **EV100497680** US addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450..

September 21, 2004
Date

Cecilia Chessell
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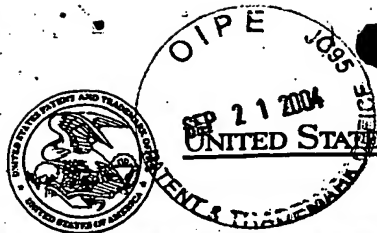
However, the correct filing date of this application is February 12, 2002, as is explained more fully in Applicants' "PETITION PURSUANT to 37 C.F.R. 1.153 AND 1.182," a copy of which is attached hereto. Consequently, the USPTO delay was 123 days, not 36 days.

Therefore, the correct PTA is **108 days**.



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UNITED STATES PATENT AND TRADEMARK OFFICE

 COMMISSIONER FOR PATENTS
 UNITED STATES PATENT AND TRADEMARK OFFICE
 WASHINGTON, D.C. 20231
 www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/075,079	02/12/2002	Jasbir S. Seehra	GI-5234 C1

 Steven R. Eck
 Five Giralda Farms
 Madison, NJ 07940

DOCKETED

DUE DATE

BY:

 6-23-02
 5/3/02

FORMALITIES LETTER



OC000000007935457

CONFIRMATION NO. 7974

Date Mailed: 04/23/2002

NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has been accorded to the above-identified nonprovisional application papers; however, the following item(s) appear to have been omitted from the application:

- Page(s) 220 of the specification (description and claims).

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit must be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date must be filed within **TWO MONTHS** of the date of this Notice.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b).** In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

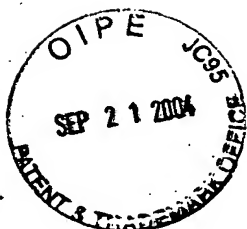
In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabelled drawing figures, is required. Any drawing changes should be accompanied by a copy of the drawing figures showing the proposed changes in red ink. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

*A copy of this notice **MUST** be returned with the reply.*

Phuong Bui
Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY



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Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re of Application of: **SEEHRA et al.**
Application No.: **10/075,079** Group Art No.: **1626**
Filed: **February 12, 2002** Examiner: **Sonyan Wright**
For: **INHIBITORS OF PHOSPHOLIPASE ENZYMES**
Confirmation No.: **7974**
Customer Number: **25291**

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

January 9, 2004

Sir:

PETITION PURSUANT TO 37 C.F.R. 1.153 AND 1.182

This is a Petition to change the May 8, 2002 filing date which the United States Patent and Trademark Office has granted to US Serial No. 10/075,079 to February 12, 2002.

The US Patent and Trademark Office records correctly show that Applicants filed the instant specification on February 12, 2002 with page 220 omitted, and the application was complete in every other respect. Page 220 was part of a dependent claim, and its omission did not result in the omission of any material subject matter. The US Patent and Trademark Office sent Applicants a Notice of Omitted Item(s) In A Nonprovisional Application ("the Notice") dated April 23, 2002, which Notice informed Applicants of the omission of page 220. A copy of the Notice is attached hereto.

CERTIFICATE OF MAILING 37 CFR §1.10

I hereby certify that this paper and the documents referred to as enclosed therein are being deposited with the United States Postal Service on the date written below in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number EV 311410906 US addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

Date

January 12, 2004

Cecilia Chessell
Cecilia Chessell

The Notice provided Applicants with three options:

- I. Provide evidence that the omitted item(s) was in fact deposited;
- II. supply the omitted item(s) and accept the date that such omitted item(s) was filed, along with a copy of the Notice, and a petition under 37 C.F.R. 1.182; or
- III. do neither I nor II and accept the application as deposited maintaining the original filing date.

The last paragraph of the Notice required an Applicant electing Option III to amend the application to cure any partial sentences caused by the omission.

Applicants wanted to keep the February 12, 2002 filing date and elected to use Option III. Applicants did not send a copy of the Notice, a petition, and the omitted page to the US Patent and Trademark Office. In accordance with the language of the Notice, Applicants constructively elected Option III by not performing the acts necessary for Options I or II.

Also in accordance with the language of the Notice relating to Option III, Applicants corrected the incomplete sentence of claim 7 by a Preliminary Amendment filed May 8, 2002. Applicants' amendment to add the missing portion of claim 7 was properly based on the disclosure of the specification as originally filed on February 12, 2002. The US Patent and Trademark Office erroneously interpreted this Preliminary Amendment as an Option II response, despite the fact that there was no indication that Applicants intended to do so, and Applicants did not fulfill the requirements for Option II; a copy of the Notice and a Petition were not sent with the Preliminary Amendment.

Applicants have always wanted and intended that the application be accorded a filing date of February 12, 2002.

In view of the foregoing facts, it is clear that the US Patent and Trademark Office misconstrued the effect of the Preliminary Amendment and improperly changed the filing date of the application from February 12, 2002 to May 8, 2002. Applicants respectfully petition the Commissioner to change the filing date back to February 12, 2002.

Please charge the \$130 petition fee, and any other fee due herewith, to Deposit
Account No. 01-1425.

Respectfully submitted,



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